No. 523

In the Supreme Court of the United States

OCTOBER TERM 1955

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLFUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER, THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT INSURANCE CARRIER.

BRIEF OF RESPONDENT THE INDUSTRIAL COMMISSION OF ARIZONA

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APPENDIX

Sec. 23-902. Employers subject to chapter

A. Employers subject to the provisions of this chapter are the state, each county, city, town, municipal corporation, school district and every person who has in his employ three or more workmen or operatives regularly employed in the same business or establishment under contract of hire, except agricultural workers not employed in the use of machinery and domestic servants. Exempted employers of agricultural workers or domestic servants or employers of less than three workmen or operatives may come under the provisions of this chapter by complying with its provisions and the rules and regulations of the commission. For the purposes of this section "regularly employed" includes all employments, whether continuous throughout the year, or for only a portion of the year, in the usual trade, business, profession or occupation of an employer.

B. When an employer procures work to be done for him by a contractor over whose work he retains supervision or control, and such work is a part or process in the trade or business of the employer, then such contractors and the persons employed by him, and his sub-contractor and persons employed by the sub-contractor are, within the meaning of this section, employees of the original employer.

C. A person engaged in work for another, and who while so engaged is independent of the employer in the execution of the work and not subject to the rule or control of the person for whom the work is done, but is engaged only in the performance of a definite job or piece

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PREFACE

Relative to the opinion below, and the jurisdiction being invoked, we adopt petitioners' appendix reference. As observed by petitioners in opening brief, the record in this matter appears in printed form in the appendix to petitioners' petition for certiorari. For the sake of clarity, and in order to avoid confusion with the appendix affixed herein to respondent's brief, we will refer to the appendix to the petition for certiorari as the Record Appendix, and the appendix herein will be referred to as Respondent's Appendix.

Once again we deem it necessary to re-phrase the question presented as follows:

"Whether the workmen's compensation law of the state of the injury *must* be applied to a motor carrier operator in interstate commerce where the claimant is domiciled in, has contracted his hire in, and is fully covered by the compensation laws of, another state."

We re-phrase the question in the above manner due to the unusual nature of the situation presented by this appeal, bearing in mind that we do not have before us a situation where the state has attempted *to place* a burden on interstate commerce, but, on the contrary, has attempted to avoid such a burden in construing its own state statutes and laws relative to the field under consideration.

It is conceded that the federal commerce clause has been discussed and used in the opinion below and that insofar as federal legislation is concerned, the federal commerce clause is the only item under consideration. Regarding the statutes of the State of Arizona, however, we would make reference to several provisions in addition to Section 23-902 (a), Arizona Revised Statutes 1956, referred to in petitioners' opening brief. These provisions including Section 23-902 in its entirety are set forth in Respondent's Appendix as Sections 23-903, 23-904, 23-961, 23-983, 23-1001, 23-1002 and 23-1003, Arizona Revised Statutes 1956.[1]

STATEMENT

Petitioners have given a statement of facts which is essentially correct with the exception of a few minor details which are strictly *dehors* the record. As to

[1]Subsequent to the decision below, the legislature of the State of Arizona adopted a code revision, and the citations herein given are to the 1956 revision, properly referred to as Arizona Revised Statutes. The revision did not effect any substantive change in existing law.

treatment of the subject matter by the Court below, it should be observed that by its decision the Arizona Court actually affirmed the basic principle of its prior decision in *Industrial Commission v. Watson Brothers Transportation Co., Inc.*, 75 Ariz. 357, 256 Pac. 2d 730 (1953). This principle involved a construction of the Arizona statutes relating to workmen's compensation and the fiscal aspects of workmen's compensation insurance in Arizona in a manner so as to preclude the application of double premium requirements. Obviously the Court, in its immediate opinion below, considered its repudiation of a portion of the *Watson Brothers* opinion to be one of minor importance in its relation to the major basis for that decision. (Record Appendix, page 18. We emphasize the fact that the matter now before us is of more far reaching effect than the immediate result of the instant case. The history of the controversy antedates the litigation in *Watson Brothers*, supra, and in fairness to the respondent commission herein, the decision in the *Watson Brothers* case must be considered along with the opinion below in the instant case.[1]

Petitioners have seen fit to place in their brief a discussion of what they choose to call general industrial facts and the two divisions of the brief appendix are concerned with similar material. We respectfully submit that this discussion, and the appendix material, is entirely extraneous, it not having been presented to the lower court in any phase, and further, the references are to fragmentary statistical material only in a broad

[1]Subsequent to the decision in the *Watson Brothers* case in 1953, the Industrial Commission of Arizona was obliged to alter by endorsement in excess of 100 of its regularly issued policies affecting employers who were operating into the state and across the state.

field where the peculiar nature of the Arizona Workmen's Compensation Act in its relation to other states is completely ignored.[1] We do not concede that the issue herein presented can be determined on the basis of motor carriers' costs for workmen's compensation and their relation to over-all costs, even though the record herein could be made complete with proper statistical material covering the Arizona situation in its relation to commerce between the various states. We do not as yet have a universal application of identical compensation acts in all of the states of the Union, and we submit that only under such a situation could consideration be given to the statistical material submitted by petitioners. Obviously, under the situation as it exists, with varying types of compensation acts in effect in the various states, we must look to the state under consideration in each instance.

SUMMARY OF ARGUMENT

Respondent will advance argument along three general lines. First, we continue to urge that the proceedings do not present a federal question properly subject to review here. We reason that the Court below dealt primarily with the construction of Arizona statutes and an over-all construction of the Arizona Workmen's Compensation Act in its relation to those employers who must concern themselves with the laws of various states in the operation of their business. We reason that there is a sound basis for the ultimate de-

[1] The Arizona Workmen's Compensation Act is unique among the various state acts in that it is the only Act of unlimited benefits. Death benefit awards to dependents, and life time awards to injured workmen, are very often in amounts many times the amount of benefits that would be available under similar circumstances in other states. From an underwriting standpoint, and from an actuarial standpoint, it naturally follows that the premium rate structure of the state fund must be gauged accordingly.

cision of the Court below existing by virtue of the statutes embodying the Arizona Act wholly aside from any consideration of the federal commerce clause. And we further assert that this basis is apparent from a careful analysis of the two Arizona cases, *Industrial Commission v. Watson Brothers Transportation Co., Inc.*, supra, and the instant *Collins* case. Secondly, we are not inclined to treat summarily the observations of the Arizona Court in the opinion below regarding the effect of the Arizona statutes and their relation to the federal commerce clause. We read in the opinion below a clear understanding of the problem facing carriers in interstate commerce as analyzed in the case of *Spohn v. Industrial Commission*, 133 Ohio St. 42, 32 N.E. 2d 554 (1941), and we feel that if the Arizona Court considers its Workmen's Compensation Act to be an undue burden in certain phases and in certain instances upon carriers engaged in interstate commerce, it should be privileged to analyze the situation and interpret the law to a finality. Thirdly, we feel that if any doubt exists concerning the degree of compulsion that the Court below felt in adhering to the federal commerce clause exception, clarification from the lower Court should be sought before final determination by this Court. We will avow that the subject matter of this litigation is of vital concern to the Respondent Industrial Commission of Arizona. This is the agency that has the problem of administering the Arizona Workmen's Compensation Act, not only from a claimant's standpoint, but from the underwriter's standpoint, and the wage problems and premium problems emphasized by the author of the opinion below (Record Appendix, page 22) will be of great importance to this agency.

ARGUMENT

1. Opinion below is justified under construction of state statutes alone.

The following language appears in the opinion below (Record Appendix, page 16):

> "* * * We hesitate to construe our workmen's compensation laws in a manner as to exclude employees injured in Arizona unless such construction is clearly required *by the terms of the statute.*" (Emphasis supplied.)

Clearly the Arizona Court had in mind its Arizona statutes, and in particular Sections 23-903, 23-904, 23-961, 23-983, 23-1001, 23-1002 and 23-1003 which appear in the appendix to this brief. Section 23-904 clearly contemplates that workmen hired outside of the State of Arizona might be injured while engaged in their employers' business in Arizona, and consequently, provision is made for the enforcement of rights against the employer in the Arizona forum. The statute recognizes that in instances of that nature coverage under the Arizona Act might not be applicable. Under Section 23-903, the Arizona Act has recognized employment in interstate commerce and makes the Arizona Act applicable in limited instances. Specific attention is directed to the provisions of Section 23-961 wherein the employer is given optional methods of securing compensation coverage. No provision is made for splitting coverage between two or more of the optional methods given. We deem this to be of importance because it completely negatives the possibility of *requiring* the employer to insure under one particular method as suggested by petitioners in their opening brief at

the holding existing solely in Arizona statutes in addition to reasons from the commerce clause standpoint. We feel that this Court should not concern itself further with the subject matter presented.

2 Observations in the opinion below concerning the federal commerce clause are sound.

We cannot concede that the Court below, in its reluctance to exact the double payment of premium from carriers, was concerned with the cost item alone, as petitioners would lead us to believe. Procedure and detail are involved as well as cost, even though the ultimate result may be termed a premium requirement. The Industrial Commission of Arizona does not concern itself with regulation of the state highways. The Commission administers an insurance plan available to all employers regardless of incidental use of the highways. Regulation of the state highways is reserved to other state agencies. We cannot discard the theory of *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945), by comparing regulations of the railroads with regulation of the highways and then proceed to find a different situation existing in the latter. The free flow of interstate commerce could be affected procedurally by the Arizona Workmen's Compensation Act aside from the cost item and aside from state highway regulation, and thus, to the extent that this Court concerned itself with the free flow of interstate commerce in the *Southern Pacific* case, like concern should exist in the instant case. The principle followed in *Spohn v. Industrial Commission*, supra, by the Ohio Court was carefully observed by the Arizona Court in the earlier decision of *Industrial Commission v. Watson Brothers Transpor-*

tation Co., supra, and the opinion below in the instant *Collins* case indicates a following of the same principle. Regardless of considerations of the Courts of New York, and other jurisdictions, so heavily emphasized by petitioners in their opening brief, we have failed to find a direct repudiation of the *Spohn* case theory, and we have failed to find a prohibition against its use by the Arizona Court in the field of workmen's compensation. Certainly the Arizona Court can best judge the effects and ramifications of its own state workmen's compensation plan, and it should have the liberty to declare its position in relation to interstate commerce procedurally as well as cost wise. We feel that petitioners have unduly limited the basic theory of the *Southern Pacific* case, supra, by seeking to compare regulation of the railroads with regulation of the state highways, the latter being of no direct concern in the instant consideration.

3. If doubt exists regarding the extent and effect of state statutes in arriving at the opinion below, clarification should be sought from the Court below before any far reaching decision herein.

We have attempted to emphasize the importance of the instant litigation to the State of Arizona in the operation of its workmen's compensation plan through its agency, the Industrial Commission of Arizona, and we have attempted to point out that the Court below is best able to judge the extent of permitted coverage under the Arizona Workmen's Compensation Act. We insist that the opinion below indicates compelling reasons for the decision existing solely within the state statutes in addition to well-founded concern over the

problems of employers operating in and between the various states. It would seem reasonable to further ascertain the views of the Arizona Court before a decision might be reached which would compel the Arizona jurisdiction to surrender vital state fund safeguards, and require the Arizona jurisdiction to amend its laws.

CONCLUSION

Affirmance of the Court below in its position should be given either at this time, or after further clarification.

Respectfully submitted:

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of work, and is subordinate to the employer only in effecting a result in accordance with the employer's design, is an independent contractor, and an employer within the meaning of this section.

Sec. 23-903. Application of chapter to persons engaged in interstate commerce; limitation

The provisions of this chapter shall apply to employers and their employees engaged in intrastate and also in interstate and foreign commerce for whom a rule of liability or method of compensation has been or may be established by the United States only to the extent that their mutual connection with intrastate work is clearly separate and distinguishable from interstate or foreign commerce.

Sec. 23-904. Effect of injury without the state; right to compensation of out-of-state employee injured within state

A. If a workman who has been hired or is regularly employed in this state receives a personal injury by accident arising out of and in the course of such employment, he shall be entitled to compensation according to the law of this state even though the injury was received without the state.

B. If a workman who has been hired without this state is injured while engaged in his employer's business, and is entitled to compensation for the injury under the law of the state where he was hired, he may enforce against his employer his rights in this state if they are such that they can reasonably be determined and dealt with by the commission and the courts in this state.

Sec. 23-961. Methods of securing compensation by employers; regulation of compensation insurance carriers

A. Employers, but not including the state or its legal subdivisions, shall secure compensation to their employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation with the state compensation fund.

2. By insuring and keeping insured the payment of such compensation with a corporation or association authorized to transact the business of workmen's compensation insurance in the state, and filing with the commission, on a form prescribed by it, notice of the employer's insurance, together with a copy of the contract or policy of insurance. The corporation or association shall write and carry all risks or insurance for which application may be made to it which are not prohibited by law, and shall carry a risk to the conclusion of the policy period unless cancellation is agreed to by the commission and the employer. Any policy shall be subject to cancellation at any time by the commission.

3. By furnishing to the commission satisfactory proof of financial ability to pay direct the compensation in the amount and manner and when due as provided in this section. The commission may require a deposit or other security from the employer for the payment of compensation liabilities in an amount fixed by the commission, but not less than one hundred thousand dollars. The employer shall pay a tax of two per cent of the premiums which would be paid by the employer if insured in the state fund. The tax shall not be less than two hundred fifty dollars per annum to be computed and collected by the commission and paid into

the expense reserve of the compensation fund. If the employer does not fully comply with the provisions of this section relating to the payment of compensation, the claims for compensation shall be deemed assigned to the commission for the benefit of the state compensation fund, and the commission shall pay the compensation, benefits or amounts as may be due under the provisions of this chapter. The commission shall then have a claim against the employer and upon his bond, if any, for the amount so paid to be recovered by the commission together with necessary expenses and a reasonable attorney's fee to be fixed by the court, and the commission may revoke the authority of the employer to pay compensation direct.

B. Corporations or associations transacting the business of workmen's compensation insurance in the state shall be subject to the rules and regulations of the commission, including rates to be charged, policy forms to be used and the method of paying compensation. Only corporations having a paid-up capital stock of five hundred thousand dollars and surplus of one hundred thousand dollars, or an aggregate capital and surplus of six hundred thousand dollars, or mutual associations having net assets over and above all liability of six hundred thousand dollars, shall be permitted to transact such business, and their liability shall include a reinsurance reserve which shall equal sixty-five per cent of the gross annual premiums or deposits received by the corporation or association on account of workmen's compensation insurance, and fifty per cent of the gross annual premiums on all other lines of insurance and a pro rata amount of gross premiums collected for more than one year.

C. Before transacting such business, the corporation or association shall deposit with the commission cash or securities in an amount equal to seventy-six per cent of the sixty-five per cent of the gross annual premiums of deposits received by the corporation or association on account of workmen's compensation insurance collected by it in the state, such securities to be at all times subject to approval of the commission. In lieu of cash or securities the corporation or association may, with approval of the commission, furnish bond of a corporate surety company authorized to transact business in the state. The bond or securities shall be held by the commission as security for fulfillment of the obligations of the corporation or association under this chapter.

D. Such an insurance carrier authorized to do business in the state shall make and file with the commission annually, on or before March 1 of each year, a statement, under oath, giving a true account of the company during the year ending December 31 next preceding. The form shall be prescribed by the commission in such manner as appears to the commission best adapted to elicit from such corporation a true statement of its financial condition. The statement shall contain:

1. The total amount of all premiums collected under workmen's compensation insurance policies or contracted for by the insurance carrier making the statement during the year.

2. The total amount actually paid for losses.

3. The total reserves for losses incurred.

4. The total amount paid policy holders on return premiums for the same period.

5. The amount of workmen's compensation insurance written in this state and reinsured in other companies not admitted, and similarly the amount reinsured in admitted companies, and the amount of such reinsurance accepted from admitted companies.

6. The premiums received for such reinsurance.

7. The names of the companies so reinsured.

E. The insurance carrier shall pay to the state treasurer for the credit of the expense reserve of the state fund, in lieu of all other taxes on workmen's compensation insurance, a tax of two per cent on all premiums collected or contracted for during the year ending December 31 next preceding, less deductions from such premiums, amounts paid to policy holders as return premiums and the amount paid as premiums to admitted companies for reinsurance on workmen's compensation insurance in this state.

Sec. 23-983. Determination of rates, surplus and reserves

A. The state compensation fund shall be neither more nor less than self-supporting.

B. Employments affected by the provisions of this chapter shall be divided by the commission for the purpose of the state compensation fund into classes whose rates may be readjusted at times the commission determines. The commission may rearrange the classes by withdrawing any employment embraced in one class

and transferring it wholly or in part to another class. Separate accounts shall be kept of the amounts collected and expended in each class for rate determination purposes, but for the payment of compensation and dividends the fund shall be one and indivisible.

C. The commission shall determine the hazards of the different classes of occupations or industries, fix the premiums therefor at the lowest rate consistent with the maintenance of a solvent compensation fund and the creation of a surplus and reserves, and may adopt a system of schedule rating in a manner to take account of the peculiar hazard of each individual risk.

D. The commission, in fixing rates, shall provide for expenses of administering the fund, disbursements on accounts of injuries and deaths of employees in each class, an adequate catastrophe reserve, reserves adequate for anticipated and unexpected losses, reserves adequate to carry the class to maturity and other necessary reserves and surplus determined by the commission. The amount of surplus and reserves shall be determined by the commission, but the catastrophe reserve shall not be less than one hundred thousand dollars.

E. The commission may in its discretion endorse on any of its regularly issued policies a self-rating plan, and may apply tentative rates, subject to modification in accordance with the loss experience of such risks, and shall provide for a carrying charge, premium tax and a rate for creation of a catastrophe reserve and reserves to be fixed by the commission for the purpose of meeting anticipated and unexpected losses.

Sec. 23-1001. Delivery of insurance contract or policy to employer

Every employer insuring in the state compensation fund shall receive from the commission a contract or policy of insurance in a form approved by the commission.

Sec. 23-1002. Payment of premium; transmittal to treasurer

A. Except as otherwise provided, every employer, except the state, who has insured in the state compensation fund shall semi-annually pay into the state compensation fund the amount of premium determined and fixed by the commissioner for the employment or occupation of such employer. A receipt or certificate, under the seal of the commission, certifying that payment has been made shall immediately be mailed to the employer by the commission.

B. All premiums received by the commission shall be paid over to the state treasurer to the credit of the compensation fund.

C. If an employer fails to pay the premium to the state compensation fund or to an insurance company authorized to do business in this state when the premium becomes due, and action is instituted to recover the premium, the prevailing party shall be entitled to a reasonable attorney's fee to be fixed by the court.

Sec. 23-1003. Semi-annual adjustment of premiums

If the amount of premiums collected from an employer at the beginning of a period of six months is based on the estimated expenditure of wages for the

ensuing six-month period, an adjustment of the premium shall be made at the end of such period, and the actual amount of the premium determined in accordance with the amount of the actual expenditure of wages for such period. If the wage expenditure for the six-month period was less than the amount estimated, the employer shall receive a refund from the fund of the difference between the amount paid by him and the amount found due, or shall have the difference credited on succeeding payments, at his option. If the premium exceeds the amount paid at the beginning of the six-month period, the employer shall upon demand pay to the commission the difference.

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BRIEF OF PETITIONERS

OPINION BELOW

The opinion below is reported at 286 P. (2d) 214. By stipulation as approved by the Clerk of this Court, the appendix to the petition for certiorari is being used in lieu of a further printed record, and the opinion below appears at what will hereafter be referred to as Appendix pp. 13 to 38.

JURISDICTION

The judgment of the Court below was entered June 28, 1955, Appendix, p. 13. Rehearing was denied October 4, 1955, Appendix, p. 39. This petition was filed in November, 1955, and certiorari was granted on January 9, 1956. Jurisdiction of this Court was invoked under 28 U.S.C. Sec. 1257(3).

QUESTION PRESENTED

Whether a state workmen's compensation law may be applied by the state of injury to a motor carrier operator engaged exclusively in interstate commerce where (a) the operator lives in, (b) made his contract of employment in, and (c) is covered by the workmen's compensation act of another state?

STATUTE AND CONSTITUTIONAL PROVISION INVOLVED

In addition to the federal commerce clause, the applicable provision of law is the Arizona Workmen's Compensation Act, sec. 23-902A, Revised Statutes of Arizona:[1]

> "Employers subject to the provisions of this chapter are . . . every person who has in his employ three or more workmen or operatives regularly employed. . . . For the purposes of this section 'regularly employed' includes all employments, whether continuous throughout the year, or for only a portion of the year, in the usual trade, business, profession, or occupation of an employer."

STATEMENT

I. Facts of This Case

This is an industrial compensation claim by the widow and child of Adolphus Henry Collins. The bulk of the facts concerning the case may be found in the Appendix to the Petition for Certiorari and, as noted above, will be so cited. A few are taken from the unprinted verified statement of facts as contained in the record certified by the Court below. It is believed that all facts are uncontroverted.

Collins was born in 1905 at El Paso, Texas, and died near Ehrenburg, Arizona, in 1953. (Verified Statement, p. 1.) He was employed at El Paso as a bus driver by defendant company, a Nebraska corporation, and in 1951 he moved to Arizona, where he drove for the same employer between Tucson and Phoenix. (*Id.*, 2, 3.) In 1952 he transferred to Los Angeles, California, driving the Phoenix-Los Angeles run. He settled his family in a trailer in Los Angeles, retaining a Phoenix mail address. (*Id.*, 3.) Though outside the record, the Court may permit us to assert that Mrs. Collins, who met the deceased in

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[1] Subsequent to the decision below and the filing of the petition in this case, Arizona adopted a code revision, and the language as given above is from the present statute. Aside from purely formal changes, there is no difference between the present and former provision.

Phoenix, has taken her child back to that place to live with her family.

The Court below found that the company was engaged exclusively in interstate commerce (Appendix 14), and that Collins spent approximately 40% of his working time on the Arizona side of the California border (Appendix 17). He was killed as the result of the blow-out of a re-tread tire (Verified Statement, p. 4).

Petitioners applied to the Industrial Commission of Arizona for compensation. That body found that Collins died on September 30, 1953, as a result of an accident in Arizona; that he was employed by defendant company; that he maintained a legal residence in California; that he was covered by California workmen's compensation; and that he left a widow and infant only six weeks old at the time of the accident. (Appendix 12, 13)

The Industrial Commission concluded that it was without jurisdiction under the decision of the Arizona Supreme Court in *Industrial Commission v. Watson Bros. Transp. Co., Inc.*, 75 Ariz. 357, 256 P. (2d) 730 (1953) (Appendix, p. 12). It construed that case as excluding from coverage under the Act, as a matter of Arizona statutory interpretation, any person who made his contract of employment outside the state and performed work elsewhere, whether engaged exclusively in interstate commerce or not. (Appendix 15)

The Arizona Supreme Court, on review duly sought, "repudiated" the *Watson Bros.* case as so interpreted (Appendix 18), holding that neither the place of contract nor the place of performance nor the combination of the two limited the coverage of the Arizona statute. It held, however, that the federal commerce clause precluded the application of the statute to purely interstate transportation; in substance, it interpreted the statute as applicable, but held it unconstitutional in that application and therefore did not apply it.*

* One member of the Arizona Court concurred on purely state statutory grounds (Appendix, p. 25), and one dissented on the ground that the federal question had been wrongly decided (Appendix, p. 25).

The Arizona court recognized that there was no danger of the burden of double liability under *Industrial Comm. of Wis. v. McCartin*, 330 U.S. 622 (1947); it found the unconstitutional burden in the possibility of requiring duplicate premiums. It is the double coverage, said the Court, "which is prohibited under our interpretation of the Commerce Clause." (Appendix, 20, 21)

Petitioners sought certiorari in this Court on the ground that a substantial federal question had been wrongly decided, in a manner in conflict with the applicable decisions of this Court and also with decisions in other states.[1]

The American Buslines, Inc., though duly served, has both below and here been a non-participating defendant. It is in receivership in Nebraska, In the Matter of American Buslines, Inc., No. B-15-54, U.C.O.C., Neb., Lincoln Division. An order has been issued barring claims against it except in that Court. However, under Arizona law, petitioners' claim is against the Industrial Commission insurance fund, which will in a separate proceedings be put to such recourse as it has against American Buslines.

II. General Industrial Facts

This record contains no factual matter on the nature of the asserted burden on commerce. Since the burden, if any, is purely financial, such facts could only consist of statistical data on cost consequences of one as against another rule. It is impossible to procure statistics bearing directly on this employer; indeed we have been unable to discover any statistics squarely in point on the industry as a whole. However a recent publication of the Bureau of Transport Economics and Statistics of the Interstate Commerce Commission, *Statistics of Class I Motor Carrier for the Year Ended December* 31, 1953, is highly suggestive. This work contains no breakdown of compensation costs for interstate as against intrastate transportation, and hence necessarily there is no further

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[1] On the federal question aspect of the matter, petitioners relied on *State Tax Comm. v. Van Cott*, 306 U.S. 511, 514 (1939); *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437, 443 (1952).

breakdown for carriers engaged exclusively in interstate movements. However there are figures for inter-city as compared with local transport.

These figures are summarized in some detail in Appendix A to this brief. They may be further summarized as follows:

Comparison of Total Costs of Class I Motor Carriers with their Workmen's Compensation Costs, Detailed in Appendix A, infra.

I. Total expense, freight carriers, owned equipment	$ 782,813,761
Workmen's compensation costs, same	6,522,967
II. Total expense, freight carriers, owned and leased equipment, purchased transportation	1,292,816,257
Workmen's compensation costs, same	8,556,630
III. Operating and maintenance expense of inter-city passenger carriers	293,050,629
Workmen's compensation, same	78,681
IV. Operating and maintenance expense, local and suburban carriers	101,181,885
Workmen's compensation, same	300,961
% of workmen's compensation cost to all costs	0.66235%

From the foregoing table it is apparent that the percentage of workmen's compensation costs to all costs among Class I motor carriers is 0.66235%. This, however, covers all employees, many of whom are not at all directly engaged in interstate commerce, as for example maintenance and garage workers, station attendants, solicitors, advertising men, and so on. A breakdown of the employees of inter-city passenger carriers from the same source,

p. 64, shows 36,996 employees, of whom 18,432, or about half, are drivers. If this same ratio can fairly be applied to the workmen's compensation figure given above, then the per cent of total expense for workmen's compensation on drivers is 0.33118%.

As the figures come closer to the case at bar, they become more speculative. Obviously not all drivers are engaged exclusively in interstate commerce — doubtless only a few are. If one were to pass from fact to hunch, the maximum percent of motor carrier industry cost allocable to workmen's compensation on *purely* interstate commerce is perhaps one fifth of the interstate commerce total, or 0.06624%.

But we have not yet reached the critical statistic in the instant case: What percentage of the total cost is involved in a requirement that motor carriers insure on purely interstate business to the level of the highest compensation state through which they operate, instead of restricting themselves to the state of employee residence or contract?

It is impossible to answer with assurance. But if the insurance cost were increased by 10% on drivers exclusively in interstate commerce, the additional percentage burden on the industry might be 0.00662% — about seven thousandths of one percent.

SUMMARY OF ARGUMENT

As a preliminary we note that the Federal Motor Carrier Act is not applicable here, leaving workmen's compensation matters on interstate carriers to state control. As this Court has held, the Motor Carrier Act excludes state regulation only where there is an explicit conflict, *Eichholz v. Public Service Commission*, 306 U.S. 268 (1939); and the Interstate Commerce Commission asserts no jurisdiction whatsoever in this area. Hence numerous state cases, cited below, have held explicitly that the Motor Carrier Act is inapplicable, and this was also the decision of the Court below in the instant case. There is therefore no issue as to this point.

The question in the case is whether the Commerce Clause by itself bars application of the workmen's compensation law of the

state of the injury to a driver in interstate commerce who contracted elsewhere and lives elsewhere. Viewing the matter from the standpoint of the full faith and credit clause, the contract clause, and the due process clause, from which standpoints it has been considered and decided, it has been established in closely related situations that the law of the state of the injury may control. *Watson v. Employers Liability Assurance Corp.*, 348 U.S. 66 (1954); *Carroll v. Lanza*, 349 U.S. 408 (1955). This is in accord with the earlier decision upholding the jurisdiction of the state of injury — in that case California — in *Pacific Employers Insurance Co. v. Industrial Accident Commission of California*, 306 U.S. 493 (1939). In this connection it is unnecessary to give detailed consideration to an earlier full faith and credit case, *Bradford Electric Light Co. v. Clapper*, 286 U.S. 145 (1932), which looked in a different direction since the California law is in any case not exclusive in the same sense as the Vermont statute involved in *Bradford*.

Taking the problem strictly as one under the interstate commerce clause, this matter is within state control. In the days prior to the Motor Carrier Act, this Court had already upheld the general powers of the states over the insurance of carriers, *cf. Sprout v. South Bend*, 277 U.S. 163, 172 (1928) and cases following it. The matter is within the general control of the states over their highways; see, *e.g., South Carolina State Highway Department v. Barnwell Bros.*, 303 U.S. 177 (1938) and *Maurer v. Hamilton*, 309 U.S. 598 (1940). The Commerce Clause is not used to prohibit police regulations, an area in which state control is particularly important; *Freeman v. Hewit*, 329 U.S. 249, 253 (1946), where the benefit to the state is considerable, there is no discrimination, and the burden is negligible. In this case the burden, which consists exclusively of requiring some carriers to buy slightly more insurance, is so small as to be imperceptible. The only state case limiting state power in this regard, *Spohn v. Industrial Commission*, 133 Ohio St. 43, 32 N.E. (2d) 554 (1941), has been very sharply limited in its own jurisdiction; see *Hall v. Industrial Commission*, 131 Ohio St. 416, 3 N.E. (2d) 367

(1936). It is in any case in conflict with the New York decisions, more fully cited below, and *Spelar v. American Overseas Airlines, Inc.*, 80 Fed. Supp. 344, 347 (S.D., N.Y., 1947), disposed of on unrelated grounds here, 338 U.S. 217 (1949).

The Court below reached this result because of its interpretation of *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945), although with obvious reluctance at its inability to apply the generous policy of Arizona workmen's compensation because of what it felt to be the federal limitation. The *Southern Pacific* case is distinguishable on numerous grounds, and does not require the result reached below.

ARGUMENT

I. No Federal Statute Precludes Operation of the Arizona Law.

As a preliminary, we may remove from consideration the possibility that any federal statute covers this field. The only possible applicable statute is the Federal Motor Carrier Act, 49 U.S.C. Section 301, et seq., and as the Court below noted, that statute has been consistently held not to affect workmen's compensation. *Basham v. Southeastern Motor Truck Lines, Inc.*, 184 Tenn. 532, 201 S.W. (2d) 678 (1947); *Hall v. Industrial Commission*, 131 Ohio St. 416, 3 N.E. (2d) 367 (1936); *Etters v. Tailways of New England, Inc.*, 266 App. Div. 929, 43 N.Y.S. 2d 884 (1943). This Court has held that the Motor Carrier Act is not to be considered as exclusive of state regulation unless there is some explicit conflict, *Eichholz v. Public Service Commission*, 306 U.S. 268 (1939); *California v. Zook* 336 U.S. 725 (1949). Not even the dissenting view in the *Zook* case would suggest a conclusion here that there is a conflict between the Federal Act and state workmen's compensation laws; see the third distinguishing circumstance in that dissent excluding from discussion State "activity related to but not specifically covered by the federal legislation." 336 U.S. at 749. The instant case is thus wholly distinguishable from *Castle v. Hayes Freight Lines*, 348 U.S. 61 (1954), involving a direct federal-state motor carrier conflict.

In the instant case there is no provision in the Motor Carrier Act relating to workmen's compensation. The regulations of the Commission under the Code provision on other aspects of motor carrier insurance, 49 U.S.C. Section 315, do not cover workmen's compensation in any way. 49 C.F.R. Section 174, *et. seq.* The Interstate Commerce Commission expressly disclaims any jurisdiction in this area and a statement from the Commission to that effect has been lodged with the Clerk and is included as Appendix B to this brief.

It follows that if there is any conflict between the Arizona statute and federal law, it must be, as the Court below held, with the commerce clause itself.

II. The Constitution Permits the State of Injury to Govern the Consequences of Injury—the Argument from the Full Faith, Due Process, and Contract Clauses.

In the instant case, the question is whether the Commerce Clause bars the application of state legislation which would otherwise govern the consequences of an injury occurring within the jurisdiction. This Court has so recently faced that question in connection with several other constitutional clauses that it is worth reviewing the matter from the standpoint of those decisions to determine whether their policy should govern here.

In *Watson v. Employers Liability Assurance Corp.*, 348 U.S. 66 (1954), the issue was the validity of a Louisiana statute permitting suits directly against insurance companies which had insured persons directly involved in an accident. The injury had occurred in Louisiana; and the insured was covered by a policy negotiated and issued in Massachusetts and delivered in Massachusetts and Illinois. This contract of insurance contained a clause, binding under Massachusetts and Illinois law, which barred direct actions against the insurance company. Louisiana law permitted such actions. This Court held that neither the contract clause, the full faith clause, nor the due process clause barred Louisiana from applying its rule to the situation. This

Court said, in language which is fully as applicable in the instant case as there:

> "Louisiana's direct action statute is not a mere intermeddling in affairs beyond her boundaries which are no concern of hers. Persons injured or killed in Louisiana are most likely to be Louisiana residents, and even if not, Louisiana may have to care for them. Serious injuries may require treatment in Louisiana homes or hospitals by Louisiana doctors. The injured may be destitute. They may be compelled to call upon friends, relatives, or the public for help. . . . Moreover, Louisiana courts in most instances provide the most convenient forum for trial of these cases." 348 U.S. at 72.

We appreciate that the *Watson* case is not this case; as Mr. Justice Frankfurter noted in his concurrence, 348 U. S. at 82, there was there "no claim of interference with interstate commerce." Nonetheless the policy factors developed in the *Watson* case are very strong as was more fully shown later in the last term in *Carroll* v. *Lanza*, 349 U. S. 408 (1955). In *Carroll*, an employee made his contract of employment in Missouri but was injured while working in Arkansas. He first received benefits under the Missouri Compensation Act which is in the most explicit terms exclusive of all other rights and remedies. Thereafter he brought an action in Arkansas for damages in common law. The issue was whether the full faith and credit clause required Arkansas to honor the exclusive provisions of the Missouri Act.

Basic differences between the *Carroll* case and this one, in addition to the fact that the California Act may not be "exclusive" in the extra-territorial sense, are first, the employee in *Carroll* was a construction worker not engaged in interstate commerce; second, the defense was based upon the full faith and credit clause rather than the commerce clause; and third, the employee had actually received payments under the Missouri law, a circumstance not present here. Nonetheless the similarities are very great: The employee did make his contract in one state and was injured in another, and he was entitled to workmen's compensa-

tion in the state of contracting just as the petitioners may be entitled here.[4]

In upholding the power of the state of the injury to give relief, this Court reviewed extensively the numerous cases previously here. This Court flatly held that Arkansas need not give full faith and credit to the Missouri policy:

> "The *Pacific Employers Insurance Company* case teaches that in these personal injury cases the State where the injury occurs need not be a vassal to the home state and allow only that remedy which the home state has marked as the exclusive one. The State of the forum also has interests to serve and to protect . . . Her interests are large and considerable and are to be weighed not only in the light of the facts of this case but by the kind of situation presented. For we write not only for this case and this day alone, but for this type of case. The State where the tort occurs certainly has a concern in the problems following in the wake of the injury. The problems of medical care and of possible dependents are among these, as *Pacific Employers Insurance Company* v. *Industrial Accident Commission, supra,* emphasizes." 349 U. S. 412, 413.

The trend of all the other cases—and the Restatement[5]—is to this end. We need not pause to consider whether *Bradford Electric Light Co.* v. *Clapper*, 286 U. S. 145 (1932), has or has not been overruled; cf. the discussion of this point in *Carroll* v. *Lanza, supra,* in the majority and dissenting opinions, 349 U. S. at 412, 421, 422. The instant case is distinguishable because of the difference in the nature of the two statutes. In *Bradford*, the Vermont statute specifically provided that the local remedy should be "ex-

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[4]Counsel feels a duty to advise the Court, even though the matter is not in this record, that, after the adverse decision of the Court below, the petitioners opened the matter of an application in California but have not pursued it to a final award pending the outcome of this litigation.

[5]Restatement of Conflicts, sec. 399.